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JESUS GARCIA

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JESUS GARCIA,

Plaintiff,

vs.

BENAV, LLC; and DOES 1 to 10,

Defendants.

**Case No.:**

COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR  
VIOLATION OF:

1. AMERICANS WITH DISABILITIES  
ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL  
RIGHTS ACT, CAL CIV. CODE §§ 51 -  
52 et seq.;
3. CALIFORNIA'S DISABLED  
PERSONS ACT, CAL CIV. CODE §54 et  
seq.
4. CALIFORNIA'S UNFAIR  
COMPETITION ACT, CAL BUS & PROF  
CODE § 17200, et seq.
5. NEGLIGENCE

Plaintiff JESUS GARCIA ("Plaintiff") complains of Defendants BENAV, LLC;  
and DOES 1 to 10 ("Defendants") and alleges as follows:

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1 the things alleged herein was acting with the knowledge and consent of the other  
2 Defendants and within the course and scope of such agency or employment relationship.

3 8. Whenever and wherever reference is made in this Complaint to any act or  
4 failure to act by a defendant or Defendants, such allegations and references shall also be  
5 deemed to mean the acts and failures to act of each Defendant acting individually, jointly  
6 and severally.

### 7 **FACTUAL ALLEGATIONS**

8 9. In or about May of 2022, Plaintiff went to the Business. The Business is a  
9 barber shop business establishment, which is open to the public, and is a place of public  
10 accommodation and affects commerce through its operation. Defendants provide parking  
11 spaces for customers.

12 10. While attempting to enter the Business during each visit, Plaintiff personally  
13 encountered a number of barriers that interfered with his ability to use and enjoy the  
14 goods, services, privileges, and accommodations offered at the Business. To the extent  
15 of Plaintiff's personal knowledge, the barriers at the Business included, but were not  
16 limited to, the following:

- 17 a. Defendants failed to comply with the federal and state standards for  
18 the parking space designated for persons with disabilities. Defendants  
19 failed to provide the parking space identification sign with the  
20 International Symbol of Accessibility.
- 21 b. Defendants failed to comply with the federal and state standards for  
22 the parking space designated for persons with disabilities. Defendants  
23 failed to post required signage such as "Van Accessible" and  
24 "Minimum Fine \$250."
- 25 c. Defendant failed to maintain the parking space designated for persons  
26 with disabilities to comply with the federal and state standards.  
27 Defendants failed to paint the ground as required.



- 1           a.     A failure to make reasonable modification in policies, practices, or  
2                     procedures, when such modifications are necessary to afford such  
3                     goods, services, facilities, privileges, advantages, or accommodations  
4                     to individuals with disabilities, unless the entity can demonstrate that  
5                     making such modifications would fundamentally alter the nature of  
6                     such goods, services, facilities, privileges, advantages, or  
7                     accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8           b.     A failure to take such steps as may be necessary to ensure that no  
9                     individual with a disability is excluded, denied services, segregated or  
10                    otherwise treated differently than other individuals because of the  
11                    absence of auxiliary aids and services, unless the entity can  
12                    demonstrate that taking such steps would fundamentally alter the  
13                    nature of the good, service, facility, privilege, advantage, or  
14                    accommodation being offered or would result in an undue burden. 42  
15                    U.S.C. § 12182(b)(2)(A)(iii).
- 16          c.     A failure to remove architectural barriers, and communication barriers  
17                     that are structural in nature, in existing facilities, and transportation  
18                     barriers in existing vehicles and rail passenger cars used by an  
19                     establishment for transporting individuals (not including barriers that  
20                     can only be removed through the retrofitting of vehicles or rail  
21                     passenger cars by the installation of a hydraulic or other lift), where  
22                     such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 23          d.     A failure to make alterations in such a manner that, to the maximum  
24                     extent feasible, the altered portions of the facility are readily  
25                     accessible to and usable by individuals with disabilities, including  
26                     individuals who use wheelchairs or to ensure that, to the maximum  
27                     extent feasible, the path of travel to the altered area and the  
28                     bathrooms, telephones, and drinking fountains serving the altered

1 area, are readily accessible to and usable by individuals with  
2 disabilities where such alterations to the path or travel or the  
3 bathrooms, telephones, and drinking fountains serving the altered  
4 area are not disproportionate to the overall alterations in terms of cost  
5 and scope. 42 U.S.C. § 12183(a)(2).

6 18. Where parking spaces are provided, accessible parking spaces shall be  
7 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every  
8 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in  
9 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA  
10 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall  
11 be van parking space. 2010 ADA Standards § 208.2.4.

12 19. Under the ADA, the method and color of marking are to be addressed by  
13 State or local laws or regulations. *See* 36 C.F.R., Part 1191. Under the California  
14 Building Code (“CBC”), the parking space identification signs shall include the  
15 International Symbol of Accessibility. Parking identification signs shall be reflectorized  
16 with a minimum area of 70 square inches. Additional language or an additional sign  
17 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A  
18 parking space identification sign shall be permanently posted immediately adjacent and  
19 visible from each parking space, shall be located with its centerline a maximum of 12  
20 inches from the centerline of the parking space and may be posted on a wall at the  
21 interior end of the parking space. *See* CBC § 11B-502.6, *et seq.*

22 20. Moreover, an additional sign shall be posted either in a conspicuous place at  
23 each entrance to an off-street parking facility or immediately adjacent to on-site  
24 accessible parking and visible from each parking space. The additional sign shall not be  
25 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in  
26 letters with a minimum height of 1 inch the following: “Unauthorized vehicles parked in  
27 designated accessible spaces not displaying distinguishing placards or special license  
28

plates issued for persons with disabilities will be towed always at the owner's expense..."  
*See* CBC § 11B-502.8, *et seq.*

21. Here, Defendants failed to provide the parking space identification sign with the International Symbol of Accessibility. In addition, Defendants failed to provide signs stating "Minimum Fine \$250" and "Van Accessible."

22. For the parking spaces, access aisles shall be marked with a blue painted borderline around their perimeter. The area within the blue borderlines shall be marked with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall be painted on the surface within each access aisle in white letters a minimum of 12 inches (305 mm) in height and located to be visible from the adjacent vehicular way. CBC § 11B-502.3.3.

23. Here, Defendants failed to properly maintain the access aisles as there was no "NO PARKING" painted on the parking surface.

24. A public accommodation shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a). By failing to maintain the facility to be readily accessible and usable by Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related regulations.

25. The Business has denied and continues to deny full and equal access to Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be discriminated against due to the lack of accessible facilities, and therefore, seeks injunctive relief to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities.

## **SECOND CAUSE OF ACTION**

### **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

26. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.



1           27. California Civil Code § 51 states, “All persons within the jurisdiction of this  
2 state are free and equal, and no matter what their sex, race, color, religion, ancestry,  
3 national origin, disability, medical condition, genetic information, marital status, sexual  
4 orientation, citizenship, primary language, or immigration status are entitled to the full  
5 and equal accommodations, advantages, facilities, privileges, or services in all business  
6 establishments of every kind whatsoever.”

7           28. California Civil Code § 52 states, “Whoever denies, aids or incites a denial,  
8 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable  
9 for each and every offense for the actual damages, and any amount that may be  
10 determined by a jury, or a court sitting without a jury, up to a maximum of three times the  
11 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any  
12 attorney’s fees that may be determined by the court in addition thereto, suffered by any  
13 person denied the rights provided in Section 51, 51.5, or 51.6.

14           29. California Civil Code § 51(f) specifies, “a violation of the right of any  
15 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)  
16 shall also constitute a violation of this section.”

17           30. The actions and omissions of Defendants alleged herein constitute a denial  
18 of full and equal accommodation, advantages, facilities, privileges, or services by  
19 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.  
20 Defendants have discriminated against Plaintiff in violation of California Civil Code §§  
21 51 and 52.

22           31. The violations of the Unruh Civil Rights Act caused Plaintiff to experience  
23 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory  
24 damages as specified in California Civil Code §55.56(a)-(c).

25                                   **THIRD CAUSE OF ACTION**

26                           **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

27           32. Plaintiff incorporates by reference each of the allegations in all prior  
28 paragraphs in this complaint.



1           33. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be  
2 entitled to full and equal access, as other members of the general public, to  
3 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,  
4 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,  
5 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes  
6 of transportation (whether private, public, franchised, licensed, contracted, or otherwise  
7 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,  
8 places of public accommodations, amusement, or resort, and other places in which the  
9 general public is invited, subject only to the conditions and limitations established by  
10 law, or state or federal regulation, and applicable alike to all persons.

11           34. California Civil Code § 54.3(a) states, “Any person or persons, firm or  
12 corporation who denies or interferes with admittance to or enjoyment of public facilities  
13 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an  
14 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for  
15 the actual damages, and any amount as may be determined by a jury, or a court sitting  
16 without a jury, up to a maximum of three times the amount of actual damages but in no  
17 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be  
18 determined by the court in addition thereto, suffered by any person denied the rights  
19 provided in Section 54, 54.1, and 54.2.

20           35. California Civil Code § 54(d) specifies, “a violation of the right of an  
21 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also  
22 constitute a violation of this section, and nothing in this section shall be construed to limit  
23 the access of any person in violation of that act.

24           36. The actions and omissions of Defendants alleged herein constitute a denial  
25 of full and equal accommodation, advantages, and facilities by physically disabled  
26 persons within the meaning of California Civil Code § 54. Defendants have  
27 discriminated against Plaintiff in violation of California Civil Code § 54.  
28

1           37. The violations of the California Disabled Persons Act caused Plaintiff to  
2 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for  
3 statutory damages as specified in California Civil Code §55.56(a)-(c).

4                           **FOURTH CAUSE OF ACTION**

5                           **UNFAIR COMPETITION ACT**

6           38. Plaintiff incorporates by reference each of the allegations in all prior  
7 paragraphs in this complaint.

8           39. Defendants have engaged in unfair competition, unfair or fraudulent  
9 business practices, and unfair, deceptive, untrue or misleading advertising in violation of  
10 the Unfair Competition Act. Bus & Prof. Code §§ 17200 *et seq.*

11           40. Defendants engage in business practices and policies that create systemic  
12 barriers to full and equal access for people with disability in violation of state and federal  
13 law.

14           41. The actions and omissions of Defendants are unfair and injurious to  
15 Plaintiff, a consumer of the Business' goods and services. As a result of Defendants'  
16 unfair business practice and policies, Plaintiff suffered injury in fact. Plaintiff was not  
17 provided with goods and services provided to other consumers. Plaintiff seeks relief  
18 necessary to prevent Defendants' continued unfair business practices and policies and  
19 restitution of any money that Defendants acquired by means of such unfair competition,  
20 including profits unfairly obtained.

21                           **FIFTH CAUSE OF ACTION**

22                           **NEGLIGENCE**

23           42. Plaintiff incorporates by reference each of the allegations in all prior  
24 paragraphs in this complaint.

25           43. Defendants have a general duty and a duty under the ADA, Unruh Civil  
26 Rights Act and California Disabled Persons Act to provide safe and accessible facilities  
27 to the Plaintiff.  
28

1 44. Defendants breached their duty of care by violating the provisions of ADA,  
2 Unruh Civil Rights Act and California Disabled Persons Act.

3 45. As a direct and proximate result of Defendants' negligent conduct, Plaintiff  
4 has suffered damages.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully prays for relief and judgment against  
7 Defendants as follows:

8 1. For preliminary and permanent injunction directing Defendants to comply  
9 with the Americans with Disability Act and the Unruh Civil Rights Act;

10 2. Award of all appropriate damages, including but not limited to statutory  
11 damages, general damages and treble damages in amounts, according to proof;

12 3. Award of all reasonable restitution for Defendants' unfair competition  
13 practices;

14 4. Reasonable attorney's fees, litigation expenses, and costs of suit in this  
15 action;

16 5. Prejudgment interest pursuant to California Civil Code § 3291; and

17 6. Such other and further relief as the Court deems just and proper.  
18

19 **DEMAND FOR TRIAL BY JURY**

20 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby  
21 demands a trial by jury on all issues so triable.  
22

23 Dated: July 5, 2022

SO. CAL. EQUAL ACCESS GROUP

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25  
26 By: /s/ Jason J. Kim  
27 Jason J. Kim, Esq.  
28 Attorneys for Plaintiff